IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 16432 of 2007(F)

PETITIONER:

1. USHA.J.,
W/O.LATE PONNAPPAN, "USHUS" (PULLUVILA),
PEROOR, TKM COLLEGE P.O., KOLLAM.

2. SIFFI.P.,
S/O.LATE PONNAPPAN, "USHUS" (PULLUVILA),
PEROOR, TKM COLLEGE P.O.,
KOLLAM.

BY ADV. SRI.ANIL K.NARENDRAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR, KOLLAM.

2. THE DEPUTY TAHSILDAR (R.R.), KOLLAM.

3. ING VYSYA BANK,
RETAIL BANKING DIVISION,
SHEMA BUILDINGS, M.G.ROAD,
RAVIPURAM, KOCHI- 682016,
REP.BY SENIOR RELATIONSHIP MANAGER.

*4. THE ORIENTAL INSURANCE COMPANY LTD.,
AMARJYOTHI COMPLEX, KADAPPAKADA,
KOLLAM – 691 008. REPRESENTED BY ITS BRANCH MANAGER.

*5. THE DEPUTY SUPERINTENDENT OF POLICE (LAW & ORDER),
KOLLAM.

(*IMPLEADED AS ADDITIONAL RESPONDENTS 4 & 5 AS PER ORDER DATED 31/05/2007 IN IA 7033/2007.)

BY ADV. SMT.SREEKALA KRISHNADAS
ADV. SHRI.P.N.SANTHOSH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 16432/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF PAGES 2 TO 5 OF THE CERTIFICATE OF REGISTRATION OF STAGE CARRIAGE BEARING REGISTRATION NO. KL-2/U-730.

P2 : COPY OF LETTER DATED 08/04/2005 OF THE 3RD RESPONDENT RESCHEDULING THE TRUCK LOAN NO. 200/04-05, ALONG WITH AMORTIZATION CHART.

P3 : COPY OF CERTIFICATE – CUM – POLICE SCHEDULE ISSUED BY THE ORIENTAL INSURANCE COMPANY LTD., WITH RESPECT OF STAGE CARRIAGE BEARING REGISTRATION NO. KL-02/U-730.

P4 : COPY OF LETTER DATED 20/06/2006 OF THE 3RD RESPONDENT ADDRESSED TO THE 1ST RESPONDENT ALONG WITH REQUISITION FORM FOR REVENUE RECOVERY.

P5 : COPY OF REPRESENTATION DATED 02/07/2006 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

P6 : COPY OF THE ORDER DATED 01/03/2007 OF THIS HON'BLE COURT IN CRL.M.C. NO. 183/2007.

P7 : COPY OF PLAINT IN OS NO.388/2006 FILED BY THE 3RD RESPONDENT BANK BEFORE THE SUB COURT, ERNAKULAM.

P8 : COPY OF SUMMONS RECEIVED BY THE 1ST PETITIONER REGARDING THE POSTING OF O.S. NO. 388/2006, FROM SUB COURT, ERNAKULAM.

P9 : COPY OF DEMAND NOTICE DATED 15/05/2007 ISSUED BY 2ND RESPONDENT TO THE PETITIONERS.

RESPONDENT'S EXHIBITS

R3(1) : COPY OF THE AGREEMENT DATED 21/02/2004.

R3(2) : COPY OF LETTER DATED 08/04/2005.

R3(3) : COPY OF NOTIFICATION OF THE RBI.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 16432 of 2007

Dated, this the 14th day of August, 2007

J U D G M E N T

Petitioners are challenging recovery proceedings for recovery of arrears of loan taken by the petitioners from 3rd respondent Bank. I heard learned counsel for the petitioners and the learned counsel appearing for 3rd respondent Bank. It is conceded that the bus which was financed by the Bank was stolen and police case is pending. Loan is covered by hypothecation agreement. Bank decided to file suit and initiated RR proceedings. First petitioner transferred the building to his daughter, which is stated to be now under attachment. The prayer in the writ petition is mainly for extension of time and for direction to the Bank to consider reduction / waiver of interest.

2. Since the vehicle is stolen, petitioners are entitled to get the insurance claim, which will be released as and when final report is filed by the police. Insurance claim is said to be Rs. 6 lakhs. Debt due as of now is stated to be around Rs. 9 lakhs. In the circumstances, I dispose of the writ petition with direction to the 3rd respondent Bank to take into account the loss suffered by the

petitioners and grant OTS benefit to the petitioners to settle liability after waiving penal / default interest and if possible, after granting reduction in interest and grant reasonable time to the petitioners to settle liability. There will be direction to additional 5th respondent to file final report within one month from the date of production of a copy of the judgment with further direction to the insurance company to release the claim directly to the 3rd respondent Bank within two weeks after filing of final police report. The 3rd respondent Bank will grant one month time to the petitioners to settle the balance liability under the OTS scheme to be granted as directed above. Recovery proceedings will remain stayed for two months from now. Thereafter recovery will be continued only if petitioners commit default in payment under OTS scheme granted by the 3rd respondent Bank. If petitioners commit default in payment under OTS benefit granted, the OTS benefit granted will stand automatically forfeited and entire claim will be recovered from the petitioner.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg